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6 JOHN A. RUSSO, an individual,

7 No. C 07-3401 MMC

8 Plaintiff,

9 v.

10 NETWORK SOLUTIONS, INC., et al.,

11 Defendants.

12 **ORDER DENYING WITHOUT  
PREJUDICE PLAINTIFF'S MOTION FOR  
DEFAULT JUDGMENT AGAINST  
DEFENDANT NAMEVIEW, INC.;  
VACATING HEARING**

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14 Before the Court is plaintiff's Motion for Default Judgment Against Defendant  
15 Nameview, Inc. ("Nameview"), filed April 25, 2008. Having read and considered the papers  
16 filed in support of plaintiff's motion,<sup>1</sup> the Court finds the matter suitable for decision thereon,  
17 hereby VACATES the hearing scheduled for May 30, 2008, and rules as follows.  
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19 In his complaint, plaintiff alleges he owns and possesses title and exclusive rights to  
20 the Internet domain name "print.com," (see Compl. ¶ 23), which title and rights plaintiff  
21 alleges were misappropriated by defendants, (see id. ¶ 24). In particular, plaintiff alleges  
22 that, on or about January 2, 2004, the above-referenced domain name was fraudulently  
23 transferred to an account for which defendant Domain Deluxe was listed as the billing  
24 contact, (see id. ¶ 33), and thereafter, on or about March 22, 2004, the domain name was  
25 transferred to defendant IARRegistry and "was placed in a Domain Deluxe account," (see id.  
26 ¶ 34).

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1 Nameview has not appeared herein, nor has it filed opposition.

1       With respect to defendant Nameview, plaintiff alleges said defendant was the  
 2 registrar of the domain name "print.com" as of October 16, 2006. (See id. ¶ 13.) In his  
 3 complaint, plaintiff asserts the following causes of action against Nameview: (1) trademark  
 4 infringement; (2) interference with prospective economic advantage; (3) interference with  
 5 prospective business interests; (4) declaratory and injunctive relief; (5) constructive trust.  
 6 In the instant motion, however, plaintiff clarifies that he is proceeding solely on his claim  
 7 that Nameview holds the domain name in constructive trust on behalf of plaintiff, (see Mot.  
 8 at 6:18-24);<sup>2</sup> he seeks injunctive relief, specifically, the transfer of the domain name from  
 9 Nameview to plaintiff, (see id. at 3:17-20).

10       Plaintiff's theory of relief against Nameview, as presented by the instant motion is  
 11 wholly derivative of plaintiff's claims against Domain Deluxe. Because Domain Deluxe has  
 12 not yet appeared in the action,<sup>3</sup> much less been found liable, plaintiff's motion for default  
 13 judgment is premature. See, e.g., Harrell v. DCS Equipment Leasing Corp., 951 F.2d  
 14 1453, 1458-59 (5th Cir. 1992) (holding, where default judgment had been entered against  
 15 corporation based on vicarious liability for actions of corporate officer, and officer  
 16 subsequently found not liable, default judgment against corporation properly set aside).

17       Accordingly, the motion is hereby DENIED without prejudice to plaintiff's renoticing  
 18 such motion or filing an amended motion after the liability of Domain Deluxe is determined.

19       **IT IS SO ORDERED.**

20       Dated: May 27, 2008



MAXINE M. CHESNEY  
United States District Judge

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 25       <sup>2</sup> Consistent therewith, plaintiff's complaint includes no allegation as to how the  
 26 domain name was transferred to Nameview, or that Nameview had actual notice that any  
 27 preceding transfer was fraudulent. (Cf. Compl. ¶¶ 35, 36 (alleging defendants Network  
 28 Solutions, Inc., eNom, Inc., and IARegistry were "given actual notice of the fraudulent  
 transfer of the domain name").)

<sup>3</sup> To date, Domain Deluxe has not been served; by order issued concurrently  
 herewith, the Court has granted plaintiff leave to effect alternate service on Domain Deluxe.